HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPAHTY

WRIT PETITION No.15846 of 1992

Between:

M/s.Tarakarama Unnikota Weaker Section
Welfare Association, Hyderabad.
… Petitioner.

And

Secretary to Government,
Municipal Administration & Urban Development
Department, Hyderabad and others.
…
Respondents.

:O R D E R :

Counsel for the petitioner : Sri D.Govardhana Chary

Counsel for respondent No.1 and 4 : Government Pleader for
Municipal Administration.

Counsel for Respondent Nos.2 and 3: Sri G.Rama Rao

5th September, 2006

Per G.S. Singhvi, C.J.

This is a petition for quashing notification dated 27-2-1992 issued by Commissioner, Municipal Corporation of Hyderabad (hereinafter described as 'the Commissioner) under Section 3(1) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 (for short, 'the Act').

By its description, the petitioner is shown to be an association representing weaker sections of the society. It has questioned the impugned notification primarily on the ground that the Commissioner does not have the power, jurisdiction or authority to exempt land which has already been declared as slum and acquired by the competent authority by issuing notifications under Sections 3(1) and 3(2) of the Act.

In the affidavit filed by Sri G.Rajamallu, S/o. Narsaiah, who has described himself as Secretary of the petitioner association, it has been averred that some persons claiming to be the owners of land comprised in Survey Nos.196/1, 196/2 and 193 measuring 9726 square yards situated in Ward No.1, Block No.3, Unnikota, Kavadiguda, Hyderabad, filed Writ Petitions No.15330, 16202 and 17869 of 1987 for quashing notification dated 11-9-1987 issued by the Commissioner under Section 3(2) of the Act whereby Unnikota of Kavadiguda had been declared as slum and the properties comprised in those survey numbers were sought to be acquired. The same were allowed by the Court on 25-1-1989 on the ground that the State Government did not issue notification in terms of Section 1(3) of the Act. However, on a review petition filed by the Municipal Corporation of Hyderabad, that order was recalled and the writ petitions were listed for fresh adjudication. The deponent has further averred that on a petition filed by the petitioner association, which was registered as WPMP.No.2601 of 1992, the Court passed an order dated 20-4-1992 staying the

execution of ejectment orders passed by the Rent Controller. Sri G.Rajamallu has further averred that during the pendency of the writ petitions, Municipal Corporation of Hyderabad issued notification dated 27-2-1992 under Section 3(1) of the Act deleting 845 square yards of land which stood acquired vide notification dated 11-9-1987. According to Sri G.Rajamallu, this has been done by the Commissioner to favour the land owners and that too by ignoring the fact that Original Suit No.1151 of 1992, filed by respondent No.5, Smt. N.Hymavathi seeking deletion of 845 square yards of land from the acquisition notification, is pending in the Court of IVth Additional Judge, City Civil Court, Hyderabad.

In the counter affidavit filed by Sri Mahmood Ali, Director, Urban Community Development, Municipal Corporation of Hyderabad, it has been averred that Smt. N.Hymavathi, respondent No.5 and two others filed Writ Petition No.608 of 1989 against the proposed acquisition of land of Unnikota slum on the plea that they had purchased vacant plots by registered sale deeds. During the pendency of that petition, respondent No.5 and others represented for deleting their vacant plots from the acquisition. The State Government forwarded their representation to Additional Commissioner of the Municipal Corporation for his comments. After some time, the Municipal Coporation submitted report dated 7-8-1991 informing the State Government that the land of the representationists is vacant and on either side of the open land, pucca houses had been constructed with all amenities. On receipt of that report, the State Government advised the Municipal Corporation to delete the plots of respondent No.5 and others from the acquisition notification subject to the condition of withdrawal of the writ petition by the owners. Accordingly, respondent No.5 and two others withdrew the writ petition. Thereafter, the Commissioner passed order dated 13-4-1992 for deleting 845 square yards from the total extent of 9726 square

yards notified under Section 3(2) of the Act. As a sequel to this, fresh notification dated 27-2-1992 was issued under Section 3(1) of the Act declaring 8881 square yards as slum. Sri Mahmood Ali has further averred that the action taken by the Municipal Corporation to delete 845 square yards of land from the acquisition notification has not resulted in violation of any right of the petitioner.

In a separate affidavit filed by her, respondent No.5 has averred that she had purchased 125 square yards of land and her relatives purchased 425 square yards of land from the owner by registered sale deeds. Later on, they made representation to the Government for deleting their land from acquisition under Section 3(2) of the Act. The State Government considered the matter and directed release of 845 square yards of land including two parcels purchased by her and her relatives. She has further averred that order dated 13-4-1992 was passed by the Commissioner because the land purchased by her and her relatives is a vacant piece of land.

Sri D.Govardhana Chary, learned counsel for the petitioner vehemently argued that the decision of the official respondents to delete 845 square yards of land from acquisition should be quashed because the same is tainted by arbitrariness and mala fides. He submitted that once the land in question has been declared as slum and acquired for the purpose of development, the State Government was not at all justified in entertaining the representation made by respondent No.5 and others for exempting the same from the provisions of the Act.

Sri G.Rama Rao, learned counsel for the Municipal Corporation of Hyderabad argued that the decision to exempt 845 square yards of land from the process of acquisition was taken by the competent authority because that piece of land does not form part of the slum and is not occupied by anybody. Sri Rama Rao

submitted that the open land is not covered by the provisions of the Act and, therefore, the Commissioner did not commit any illegality by granting exemption. Lastly, Sri Rama Rao argued that the writ petition is liable to be dismissed because the petitioner has not impleaded some of the persons as party respondents whose land has been exempted from the process of acquisition. In reply to the Court's query, Sri Rama Rao fairly conceded that previous notifications under Sections 3(1) and 3(2) of the Act were issued without proper application of mind to the fact situation obtaining on the spot.

We have thoughtfully considered the entire matter. In our opinion, the writ petition is liable to be dismissed because –

i) The petitioner has neither placed on record copy of order dated 13-4-1992 passed by the Commissioner nor it has challenged the same.

ii) None of the alleged unauthorized occupants of the land forming part of notification dated 11-9-1987 has come forward to challenge notification dated 27-2-1992.

iii) The petitioner association has neither given the particulars of its members nor it has been shown that the persons illegally occupying the land are its members and that it has been authorized to file writ petition questioning the legality of notification dated 27-2-1992.

iv) None of the petitioner's legal or fundamental right is shown to have been violated by virtue of exemption granted by the competent authority to 845 square yards of land from the operation of the provisions of the Act.

v) Some of the persons whose land has been exempted from acquisition have not been

impleaded as party respondents and without giving them notice and opportunity of hearing, the Court cannot pass any order adversely affecting their right.

vi) The allegation made by the petitioner suggesting that the decision to grant exemption to 845 square yards of land has been taken due to extraneous reasons or mala fides has remained unsubstantiated. The petitioner has not produced any tangible evidence to establish the charge of malice in fact. Therefore, by applying the ratio of the Supreme Court's judgment in **E.P. Royappa v. State of Tamil Nadu**[1], we hold that the petitioner has failed to prove the charge of mala fide exercise of power.

vii) The power to acquire the land by invoking the provisions of the Act carries with it the power to rescind, amend, alter or modify the notification issued for acquisition. Therefore, the decision taken by the Commissioner to exempt/delete 845 square yards of land from the process of acquisition cannot be declared as vitiated due to lack of jurisdiction.

For the reasons stated above, the writ petition is dismissed.

G.S. SINGHVI, C.J.

5th September, 2006

G.V.SEETHAPATHY, J.

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[1] AIR 1974 SC 555